Supreme Court, U. S.
FILED
SEP 8 1978
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1978

No. 78-395

JOHN V. TERRY and ALINE S. TERRY,
Petitioners,

vs.

KLAMATH PRODUCTION CREDIT ASSOCIATION,
a corporation,
Respondent.

PETITION FOR WRIT OF CERTIORARI
to the California Supreme Court

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PETITION FOR WRIT OF CERTIORARI
to the California Supreme Court

Petitioners respectfully pray that a writ of certiorari issue to review the action by the Supreme Court of the State of California permitting the taking of Petitioners' ranch and personal property on security instruments found void by a trial jury and judge. The basis upon which certiorari is sought is that Petitioners were required to seek relief before the same appellate court that had committed the illegal acts, of which three of the judges were defendants in a civil rights action instituted by Petitioners. Petitioners contend that there was basic procedural unfairness in such action.

OPINIONS BELOW

The Supreme Court of the State of California entered no opinion in denying Petitioners' petition for hearing, and the California Court of Appeal for the Third Appellate District entered no opinion in dismissing Petitioners' appeal. The summary judgment granted by the Superior Court for Siskiyou County, California, is attached to this petition as Appendix "A".

JURSIDICTION

The jurisdiction of this Court is invoked under the Fourteenth Amendment of the United States Constitution and 28 U.S.C.A., Sec. 1257 (3).

QUESTION PRESENTED

Does the Constitution and this Court provide relief from illegal acts of a state appellate court, which illegal acts permit Respondent to foreclose against Petitioners' ranch, land, and equipment, depriving them of their lifelong occupation, without a trial and with appeal only to the appellate court committing the illegal acts?

STATUTES INVOLVED

Amendment XIV, United States Constitution, Sec. 1, provides:

". . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

28 U.S.C.A., Sec. 1257 (3), provides:

"Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows: . . . (3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States. June 25, 1948, c. 646, 62 Stat. 929."

California Constitution, Art. XI, Sec. 4 1/2, provides:

"No judgment shall be set aside, or new trial granted, in any case, on the grounds of misdirection of the jury, or of the improper admission or rejection of evidence, or for any error as to any matter of pleading, or for any error to any matter of procedure, unless, after an examination of the entire cause including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice."

California Constitution, Art. VI, Sec. 4c, provides:

"The Supreme Court shall have power to order any cause pending before the Supreme Court to be heard and determined by a district court of appeal, and to order any cause pending before a district court of appeal to be heard and determined by the Supreme Court. The order last mentioned may be

made before judgment has been pronounced by a district court of appeal, or within 15 days in criminal cases, or 30 days in all other cases, after such judgment shall have become final therein. The judgment of the district courts of appeal shall become final therein upon the expiration of 15 days in criminal cases, or 30 days in all other cases, after the same shall have been pronounced.

The Supreme Court shall have power to order causes pending before a district court of appeal for one district to be transferred to the district court of appeal for another district, or from one division thereof to another, for hearing and decision. (New section adopted November 6, 1928)"

California Code of Civil Procedure, Sec. 53, provides:

"The Supreme Court, and the District Courts of Appeal, may affirm, reverse, or modify any judgment or order appealed from, and may direct the proper judgment or order to be entered, or direct a new trial or further proceedings to be had. The decision of the court shall be given in writing, and in giving its decision, if a new trial be granted, the court shall pass upon and determine all the questions of law involved in the case, presented upon such appeal, and necessary to the final determination of the case. Its judgment in appealed cases shall be remitted to the court from which the appeal was taken."

California Code of Civil Procedure, Sec. 475, provides:

"The court must, in every stage of an action, disregard any error, improper ruling, instruction, or defect, in the pleadings or proceedings which, in the opinion of said court, does not affect the substantial

rights of the parties. No judgment, decision, or decree shall be reversed or affected by reason of any error, ruling, instruction, or defect, unless it shall appear from the record that such error, ruling, instruction, or defect was prejudicial, and also that by reason of such error, ruling, instruction, or defect, the said party complaining or appealing sustained and suffered substantial injury, and that a different result would have been probable if such error, ruling, instruction, or defect had not occurred or existed. There shall be no presumption that error is prejudicial, or that injury was done if error is shown."

STATEMENT OF THE CASE

Between 1967 and 1972, Respondent Klamath Production Credit Association (hereinafter referred to as K.P.C.A.), a federally chartered instrumentality of the United States, through its agent, secured notes secured by security instruments on Petitioners' ranch, equipment, livestock, and ranch earnings, through deceit and undue influence. During that time, by breach of its fiduciary capacity and control over Petitioners, it caused losses to Petitioners and prevented payment of the notes thus secured.

In 1972, K.C.P.A. filed an action to foreclose against Plaintiffs' ranch, equipment, and livestock, upon the aforesaid security instruments; and Petitioners defended and cross-complained, seeking judgment for damages and affirmative relief, cancelling notes and security instruments. In May of 1974, Petitioners, after a jury trial, secured a judgment against the Respondent K.P.C.A. for damages resulting from their aforesaid injuries, and upon separate findings by the trial judge,

received a decree voiding and cancelling the security instruments of K.P.C.A.

The California Court of Appeal, Third Appellate District, upon appeal by K.P.C.A., conjured error in instructions and verdict form (although the transcript relating to discussion and agreement of opposing counsel as to instructions and verdict form were not before it and no briefs or oral arguments relating to instructions or verdict form were presented to it--thus the use of the word "conjured".) and made its own findings of fact and remanded the case for entry of judgment foreclosing Terrys' ranch and equipment, eliminating all substantial issues of pleading of fact.

The constitutional issue that the wrongful acts of the California Court of Appeal constituted the taking of Petitioners' property without due process was raised by petition for rehearing (denied without opinion), petition for hearing to the California Supreme Court (denied without opinion), objection to summary judgment in Trial Court (denied by entry of judgment), appeal to Court of Appeal (dismissed without opinion), petition for hearing to California Supreme Court (denied without opinion). The argument of Petitioners in all these courts was that the trial judge and jury had made a lawful finding, the finding of the California Court of Appeal was unauthorized by law and constituted a taking of Petitioners' property without due process of law. This constituted a violation of civil rights of Petitioners, but was not actionable by reason of judicial immunity. After summary judgment in the California Superior Court, a petition to transfer appeal to another district was filed because of the civil rights action between Petitioners and judges of the Court of Appeal for the Third Appellate District. This was also

denied by the California Supreme Court. This insured denial of relief to Petitioners.

Upon exhaustion of State remedy, Petitioners Terrys filed a civil rights action in the Federal courts, which was denied on the basis of judicial immunity. No personal judgment was sought against the defendant judges of the Court of Appeal for the Third Appellate District of the State of California. Relief was without trial or presentation of issues of fact. Thereafter, based upon the illegal acts of the Court of Appeal for the Third Appellate District of the State of California, a summary judgment was entered in favor of K.P.C.A. and against Terrys, foreclosing their ranch, equipment and personal property. Appeal was filed by the Terrys and a petition was filed with the Supreme Court of the State of California pursuant to California Constitution, Art. VI, Sec. 4c, to transfer the appeal to another appellate district for the reason that the judges of the Third Appellate District were defendants in a civil rights action brought by Terrys for the aforesaid judicial transgressions. This petition was denied. Terrys were required to appeal to the Court of Appeal for the Third Appellate District, which dismissed the Terrys' appeal upon request by K.P.C.A., and hearing on said dismissal was denied by the California Supreme Court, also without hearing.

It is the Terrys' position in this petition that there was a basic judicial unfairness amounting to denial of due process, to require an appellant to appeal to a panel of judges, three of whom were adverse parties in a civil rights action involving the same matter, and for the only State reviewing court having authority to deny a hearing thereon.

Thus, the Terrys, although they have a right of appeal under the laws of the state of California, were denied an appeal by this procedure, because the wrong was committed by the very appellate court before whom they were required to appear; and their property is being taken without due process of law by reason of basic judicial unfairness. This is contrary to the United States Constitution, which prohibits taking without due process and confers upon the Supreme Court of the United States the power to enforce same.

REASONS FOR GRANTING THE WRIT

A. THE CALIFORNIA STATE APPELLATE COURT COMMITTED THE WRONG WHICH IS THE BASIS OF THE UNLAWFUL TAKING OF PETITIONERS' FARM, EQUIPMENT, AND LIVELIHOOD, AND CERTIORARI IS THE ONLY REMEDY.

In this case, the California Court of Appeal, Third Appellate District, proceeded to try a case that had already been tried by a trial judge and jury, then made its own findings of fact, modified the pleadings to support its findings of fact, and on such basis, remanded the case to the trial court, with nothing left but for the trial court to enter judgment in accordance with said findings of fact and modification of pleadings in favor of K.P.C.A. and against Terry, providing for foreclosure against the Terrys' farm, equipment, and farm earnings.

These acts were illegal in that the laws of the state of California provide for the appellate courts consisting of the Court of Appeals for the various districts and the California Supreme Court. These laws also restrict the lawful activity of the appellate courts in the California

Constitution, Art. XI, Sec. 4 1/2, and by statute, California Civil Procedure, Sec. 53, and California Civil Procedure, Sec. 475. California Constitution, Art. VI, Sec. 4c, gives the California Supreme Court the authority to correct a wrongful act of the Court of Appeal, but that was not done in this case.

Under the law of the state of California (In Re Estate of Pusey, 181 P. 864, 180 Cal. 368), an invalid judgment should be set aside by any court. But the failure of the Supreme Court of California to act in this instance means that only the United States Supreme Court has the practical authority to do so.

B. THE SERIOUSNESS OF THE TAKING OF PETITIONERS' ENTIRE LIVES' WORK BY ILLEGAL JUDICIAL PROCESS IS OF SUCH GROSS MAGNITUDE AS TO REQUIRE RECTIFICATION BY THIS COURT.

Every year, a farmer takes the chance that, by reason of weather, flood, drought, insects, or other causes, he will lose his entire operation. This is a necessary and acceptable risk, and one that he can endure. In this case, the Terrys are not losing their farm, equipment, and livelihood by reason of any of the assumed risks, but rather by wrongful act of the State judicial appellate system. From this, there is no executive clemency or legislative relief.

In seeking relief from this Court, Petitioners are trying to avoid unjust enrichment by K.P.C.A. and their impoverishment proximately caused by abuse of State appellate process. The farm, livestock and equipment of a Tulelake, California couple is a matter of national concern when taken from them in this manner without

hearing at the taking stage. This is vital to the working of our judicial system and public confidence therein. The notion that "when you buck the bank you get no trial" is not and should not be incorporated in our law at any level.

CONCLUSION

Where a wrong depriving a citizen of his property without due process of law is committed by a state appellate court and the only review is to the same court committing the wrong, this constitutes basic judicial unfairness that is prohibited by the United States Constitution and requires a review by this Court to resolve.

Respectfully submitted,

GLENN D. RAMIREZ,
Attorney for Petitioners.

(Appendices Follow)

Appendices

Filed
Aug. 26 11:27 A.M. 77
Norma Price
SISKIYOU COUNTY CLERK
By B. Thomas
Deputy

Appendix A

Superior Court of the State of California
For the County of Siskiyou

KLAMATH PRODUCTION CREDIT ASSOCIATION, a Corporation, No. 24951

Plaintiff,

vs. SUMMARY JUDGMENT AND DECREE OF FORECLOSURE

JOHN V. TERRY and ALINE S. TERRY, his wife, et al,

Defendants.

On February 28, 1977, this Court duly granted plaintiff's motion, pursuant to Section 4373 of the Code of Civil Procedure, for an order striking the answer herein and entering judgment for plaintiff on its Complaint, and staying entry of judgment pending examination of defendants by plaintiff upon examination had before the Court upon notice and other process as may be appropriate for the purpose of ascertaining the nature and extent of the personal property security remaining subject to the Security Agreements described in the Complaint, and such examination of the defendants having been had, and supplemental order entered, now, in accordance with said orders, the Complaint and the proofs submitted upon the hearing of said motion for summary

judgment, and good cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That defendants, John V. Terry and Aline S. Terry, are indebted to plaintiff in the sum of $45,109.95, together with interest thereon at the rate of 6.8% per annum from June 1, 1971 amounting to $25,098.00 interest to and including the 30th day of April, 1977, and daily accruing interest of $7.738914 per day from and including the 1st day of May, 1977, to and including the date of entry of this judgment, for a total of $29,840.9357 interest, and a total indebtedness of $70,950.89, less $4,805.00 credit for 594 shares Class B stock at $2,970.00 and an equity reserve of $1,835.00 for a total credit of $4,805.00, leaving a total indebtedness as of the date of entry of this judgment amounting to the sum of $66,865.89.

2. That in pursuance of the notes, deeds of trust and security agreements herein, plaintiff is entitled to its attorneys' fees which, the Court finds to and including the date of entry of this judgment to be the sum of $13,200.00, together with plaintiff's costs of suit, including $7,016.42 costs on appeal and $_____ costs in this Court, hereby assessed at a total of $_____, as well of costs of foreclosure and sale.

3. That plaintiff's security agreement and financing statements are a first lien upon the personal property hereinafter described.

4. That the plaintiff's deeds of trust, hereinafter more particularly described, are, and each of them is, a first lien upon the real property therein and hereinafter described.

5. That defendants, John V. Terry and Aline S. Terry, are the only persons against whom a deficiency judgment may hereafter herein be decreed, but the

Court shall hereafter, upon the ex parte motion of the plaintiff, appoint a Commissioner of this Court for the purposes of sale, and he is hereby ordered to sell the personal property hereinafter described, or so much thereof as may be necessary to carry out this decree in the manner prescribed by law, and in the event that said personal property be insufficient to pay the indebtedness of defendants, John V. Terry and Aline S. Terry, to plaintiff Klamath Production Credit Association, he is ordered to sell the real property hereinafter described, or so much thereof as may be necessary to carry out this decree in the manner prescribed by law. He shall, subject to the provisions hereinafter made for disposition of funds in the hands of the Clerk of the above entitled Court and funds which may hereafter be found to be due and be recovered from purchasers with notice of said security agreement and financing statements, pay to plaintiff, after deducting the expenses of such sale or sales, the amounts set forth hereinafter and deposit the remaining proceeds with the Court pending further order. Prior to the entry of said Commissioner upon his duties, he shall swear to perform his duties as ordered herein, according to law, and shall also execute the State of California an undertaking in the sum of $2,000.00 with sureties to be approved by this Court or a surety company bond in the sum of $1,000.00 that he will perform his duties accordingly. He shall receive as compensation the sum of $75.00 per day.

6. The Court reserves and shall have the power to take all proceedings required for accounting by the purchasers of the personal property subject to the aforesaid security agreements and financing statements in the above entitled action and to direct application of the net amount of property recovered from such purchasers be paid and disbursed as the

Court shall hereafter determine, including payments upon the obligations and debts of the defendants hereinabove determined, as well as those certain sums heretofore deposited with the Clerk of this Court upon proceedings in interpleader.

7. Upon the termination of the period of redemption allowed by law, after such sale of real property, the defendants, John V. Terry and Aline S. Terry, shall be forever barred from any right of equity of redemption.

8. The purchasers at the sale and sales herein shall be delivered possession of said personal property and shall be led into possession of said real property and in aid thereof, may have the assistance of the Sheriff of the County of Siskiyou.

9. The defendants, John V. Terry and Aline S. Terry, be, and each of them is hereby enjoined and debarred of and from all claim of any right, title and interest of, in and to the real and personal property hereinafter described, and it is ORDERED, ADJUDGED AND DECREED that all right, title and interest of said defendants, and each of them, is subordinate to and subject to the right, title and interest of the plaintiff in and to both the said personal property and real property, and that the purchaser and purchasers at said sale and sales, by virtue of the foreclosure and sale, shall have and receive good and valid title of, in and to the said personal property and in and to said premises free and clear of all right, title and interest of said defendants, and each of them.

10. The Court reserves the right to adjudicate all matters pending between plaintiff and those persons who shall have purchased personal property subject to the aforesaid security agreements and financing statements.

11. The personal property which is the subject of this decree and order is,

1. The personal property which is the subject of this decree and order is,

That described in the Security Agreement dated March 5, 1969, namely:

1 Bulk bed
1 M International tractor
1 4-row International cultivator
1 2-row International potato digger
1 2-row Shafter potato digger
1 7-1 / 2' International tandem disc
1 10' John Deere grain drill
1 Eversman ditcher
1 Morrell hay rake
1 Bale elevator
1 Taco cattle chute
1 International 503 combine
1 560 International tractor
1 16" 2-way International 2-bottom plow
1 #9 12' International cultivator
1 4-row Lilliston cultivator
1 Brady chopper
1 12' John Deere tandem disc
1 16" 4-bottom John Deere plow
1 8-Sec. John Deere harrow
1 6' John Deere mower
1 Johnson bale loader
1 Lewis potato elevator
1 Rubber tired farm wagon

An undivided one-half (1 / 2) interest in the following:

1 5" Rain Master sprinkler pump
1 set International disc ridgers
1 40' Custom land plane
1 7' John Deere scraper blade

Except those items of which disposition has been made, namely:

1 560 International tractor
1 International 530 combine
1 4-row Lilliston cultivator
1 Lewis Potato Elevator

12. The real property which is the subject of this decree and order is:

(a) All that real property described in the certain deed of trust dated March 5, 1969, recorded March 20, 1969, being all that real property situate in the County of Siskiyou, State of California described as: Undivided 1%2 interest in the following described land: SW1/4 Section 13, Township 44 North, Range 4 East, M.D.M.

(b) All that real property described in the certain deed of trust dated March 7, 1967, recorded May 5, 1967, being all that real property situate in the County of Modoc, State of California described as: Farm Unit "B", according to Farm Unit Plat, being lots 19, 20, 22, and 23, Section 22, Township 46 North, Range 5 East, M.D.M. Lots 24 and 29, Section 22, Township 46 North, Range 5 East, M.D.M. (containing 47.9 acres, more or less).

13. That the security agreements, financing statements and deed of trust hereinabove referred to and hereby foreclosed are the following:

(a) Security Agreement dated April 9, 1968 covering cattle, crops, farm machinery and equipment, including all property of the type therein described then owned or thereafter acquired by the debtors.

(b) Security Agreement dated March 5, 1969 covering cattle, crops, farm machinery and equipment, including all property of the type therein described then owned or thereafter acquired by the debtors.

(c) Deed of trust dated March 7, 1967, and

recorded March 15, 1967, as No. 1590 in Volume 201 at page 110 of the Official Records of Modoc County, California.

(d) Deed of trust dated March 5, 1969, and recorded March 20, 1969, as No. 9708 in Volume 573 at page 253 of the Official Records of Siskiyou County, California.

Dated, Aug 22, 1977.

Stanley C. Young, Jr.
Judge of the Superior Court

Supreme Court, U.S.
FILED
SEP 8 1978
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1978

No. 78-395

JOHN V. TERRY and ALINE S. TERRY,
Petitioners,

vs.

KLAMATH PRODUCTION CREDIT ASSOCIATION,
a corporation,
Respondent.

SUPPLEMENTAL APPENDIX
TO
PETITION FOR WRIT OF CERTIORARI
to the California Court of Appeal
Third Appellate District

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Appendices

Appendix B

IN THE

Court of Appeal of the State of California

IN AND FOR THE
THIRD APPELLATE DISTRICT

KLAMATH PRODUCTION CREDIT ASSOCIATION — 3 Civil 17132

v. — Siskiyou 24951

JOHN V. TERRY

By the Court:

Respondent's motion to dismiss appeal is granted and the appeal filed August 31, 1977, is dismissed. Appellants' motion for summary judgment in favor of appellants is dismissed as moot.

Dated: April 21, 1978

JANES, Acting P. J.

(Evans, J. voted to impose costs against appellants)

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FILED
APR 21 1978
COURT OF APPEAL — THIRD DISTRICT
WILFRED J. KRAMER, Clerk
By _____ Deputy

Appendix C

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING

SAN FRANCISCO, CALIFORNIA 94102

JUN 15 1976

I have this day filed Order

HEARING DENIED

In re: 3 Civ. *No.* 17132

Klamath Production Credit Assn.

vs.

Terry

Respectfully,

G. E. BISHEL
Clerk

57971-877 1-76 SM 661

Supreme Court, U. S.
FILED
SEP 8 1978
MICHAEL RODAK, JR., CLERK

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1978

No. 78-395

JOHN V. TERRY and ALINE S. TERRY,
Petitioners,

vs.

KLAMATH PRODUCTION CREDIT ASSOCIATION,
a corporation,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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In the Supreme Court
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OCTOBER TERM, 1978

No.

JOHN V. TERRY and ALINE S. TERRY,
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Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

Neither the California Supreme Court nor the California Court of Appeal issued an opinion with respect to the dismissal of Petitioners' appeal. The order of the Court of Appeal granting Respondent's motion to dismiss Petitioner's appeal as frivolous is attached hereto as Appendix "A".

JURISDICTION

Petitioners invoke this Court's jurisdiction under Title 28 United States Code Section 1257(3).

QUESTION PRESENTED

Whether the dismissal of Petitioners' state court appeal as frivolous denied Petitioners due process of law.

STATEMENT

An action was commenced by Klamath Production Credit Association in 1971 to recover money due under notes made by John V. Terry and Aline S. Terry and to foreclose upon the security for the notes. The Terrys filed a cross-complaint claiming that Klamath Production Credit Association had been guilty of deceit and undue influence. The case was tried in the Superior Court, Siskiyou County, and a verdict in favor of Terrys on their cross-complaint was entered.

Klamath Production Credit Association appealed to the California Court of Appeal, Third Appellate District, arguing, among other things, that there was no substantial evidence to support the judgment. The Court of Appeal reversed the judgment. The Terrys petitioned to the Court of Appeal for a rehearing; the petition for rehearing was denied. The Terrys then petitioned the California Supreme Court for a hearing; the petition for hearing was denied.

Following the remittitur to the trial court, the Terrys filed an action in the United States District Court, Eastern District of California, claiming that Klamath Production Credit Association and three justices of the Court of Appeal had violated Terrys' civil rights. The district court dismissed the action and the United States Court of Appeals for the Ninth Circuit affirmed the dismissal. The Terrys petitioned this Court for a writ of certiorari [United States Supreme Court No. 77-871]; the petition was denied.

Meanwhile, the state court severed Terrys' cross-complaint and granted summary judgment in favor of plaintiff Klamath Production Credit Association on its complaint. Terrys filed their notice of appeal from the judgment entered upon the complaint. Klamath Production Credit Association moved to dismiss the appeal as frivolous, and the Court of Appeal granted the motion. The California Supreme Court denied Terrys' petition for a hearing in that court.

ARGUMENT

THE PETITION FOR WRIT OF CERTIORARI IS AN ATTEMPT TO RELITIGATE MATTERS FINALLY DECIDED

Petitioners' appeal to the California Court of Appeal from the order granting summary judgment raised no question whatsoever concerning the validity of that order. Rather, their opening brief argued that the court had incorrectly reversed the initial judgment. Rejecting the attempt to relitigate the prior appeal, the Court of Appeal dismissed the appeal as frivolous.

The petition for writ of certiorari now presented to this Court again repeats the charge that petitioners have been denied due process of law by the California courts. These claims have been found to be legally groundless by the California Court of Appeal, the California Supreme Court, the United States District Court for the Eastern District of California, the United States Court of Appeals for the Ninth Circuit, and by this Court.

The only new factor added to the case is Petitioners' claim that the California Supreme Court sealed their fate by refusing to transfer their appeal to another appellate district whose judges Petitioners had not sued. This charge has no more substance than any of their other claims. The issue was not even raised when Petitioners sought a hearing in the California Supreme Court. In fact, Petitioners could have disqualified any justice under the provisions of the California Code of Civil Procedure if any justice of the Court of Appeal was thought to be prejudiced. Further, the justices who granted the motion dismissing the appeal as frivolous were not even the same as those who heard the earlier case and had thereupon been sued by Petitioners. Petitioners' claim that they have been treated unfairly by the California courts has no basis in fact. If Petitioners were treated summarily in their second appeal, it was simply because their appeal raised not a single new issue and had no semblance of substance.

CONCLUSION

No substantial question is raised by the petition for writ of certiorari. It is therefore respectfully submitted that the petition for writ of certiorari should be denied.

Dated: August 29, 1978.

FORREST A. PLANT,
JAMES T. FREEMAN,
DIEPENBROCK, WULFF, PLANT & HANNEGAN,
Attorneys for Respondent Klamath Production Credit Association.

(Appendix "A" Follows)

APPENDIX A

Appendix "A"

In the Court of Appeal
State of California
Third Appellate District

---

3 Civil No. 17,132
Siskiyou 24,951

Klamath Production Credit Association,

vs.

John V. Terry.

[Filed Apr. 21, 1978]

BY THE COURT:

Respondent's motion to dismiss the appeal is granted and the appeal filed August 31, 1977, is dismissed. Appellants' motion for summary judgment in favor of appellants is dismissed as moot.

Dated: April 21, 1978.

JANES, Acting P.J.

(Evans, J. voted to impose costs against appellants)

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